



MONTANA SECRETARY OF STATE

SENATE State Admin
Exhibit No. 5
Date 4-4-2011
Bill No. LINDA McCULLOCH
HB 180

MEMORANDUM

DATE: March 29, 2011

TO: Members of the Senate State Administration Committee

FROM: Secretary of State Linda McCulloch *LMC*

RE: Voter Fraud Allegations by an Opponent to HB 180

On Friday, March 18th, Lee Clemmensen, an opponent to HB 180, testified in your committee about a 2005 Missoula City Council race in which she was an unsuccessful candidate. In her testimony she alleged that voter fraud had occurred in that election, claiming that there were suspicious signatures for roughly 40 people.

Ms. Clemmensen stated that she had raised her concerns to the Secretary of State's office at the time following that election in 2005. This was the first time that I had heard these allegations, as these events took place during my predecessor's term in office. It was also the first time that members of our elections staff who were employed here in 2005 had heard of these claims.

According to Ms. Clemmensen, the Secretary of State's office apparently directed her to the Commissioner of Political Practices, who then directed her to the Attorney General. Ms. Clemmensen said the Attorney General started investigating, and then abruptly stopped. In addition, she claimed that all 3 agencies agreed that there had been some kind of "mess" in that election.

Our office has looked into the matter. The elections division has researched all files, including emails and phone logs for the period immediately after the 2005 municipal election, and could find no record of a complaint being reported to this office.

Additionally, we contacted the Missoula County Clerk and Recorder's Office for more information. The response from Missoula County Clerk and Recorder Vicki Zeier indicates that these allegations were indeed investigated and dismissed by the Missoula County Attorney in 2005, soon after Ms. Clemmensen filed her complaint:

"Lee Clemmensen did file a complaint with my office after she lost the 2005 city council race. She questioned the signatures in the register stating that they did not match the voter registration card (these were not absentee voters). After she went through the registers and cards with staff she submitted a list of about 40 people who she felt were not the individuals who voted. Mike Sehestedt [then the Chief Civil Deputy County Attorney for Missoula County] requested Debbe [the Deputy Clerk and Recorder] to contact each voter to see if they did indeed vote or not."



Debbe Merseal, the Deputy Clerk and Recorder, then contacted all of the voters that Ms. Clemmensen questioned from that race. Addressing the issue to us, she states that:

"I was able to contact most of the voters on the list by phone and each one of them confirmed that they did indeed vote. There were a few voters (maybe 5) that I was unable to contact either by phone or mail. I met with Mike Sehestedt, he reviewed my findings and decided that there was no indication of any voter fraud so the investigation stopped there."

There are three important things to note from these findings:

- 1) Clerk and Recorders take threats and allegations of voter fraud very seriously.
- 2) It was confirmed by the Missoula County Attorney that Ms. Clemmensen's allegations of fraud were not accurate.
- 3) Just because someone alleges voter fraud does not mean that voter fraud actually occurred.

I would like to stress the importance of the third point above. Throughout the 62nd Legislature, there have been numerous instances where the phrase "voter fraud" has been used as ammunition against common sense legislation that could improve elections across Montana. More often than not, these allegations are either fabricated or false, and are sometimes made by unsuccessful candidates for office who are sure that their loss is attributed to some kind of "fraud." What's truly disturbing is the eager willingness of some legislators to amplify these false allegations as legitimate proof positive of "voter fraud."

As I have said before, it's irresponsible for anyone to allege voter fraud based on gossip, hearsay, or political posturing. It's even more extreme when some legislators use those false claims of voter fraud as a sham excuse to propose unnecessary and reckless bureaucratic hurdles that will make it harder for eligible Montanans to vote.

My office takes the threat of voter fraud very seriously. While the Secretary of State does not have the legal authority to investigate voter fraud, my administration has set up a process in which citizens can register their claims with our office. This is the first time that such a process has been employed by this office. If we receive any complaints or allegations of fraud throughout the signature gathering process for citizen initiatives or during elections, we document the allegations and refer any legitimately questionable actions to the appropriate county attorney. The individual who made the accusation is also informed that their concerns were referred to the County Attorney.

You can see an example of the process in the complaint filing form I have attached to this memo. For the 2012 election cycle, my office is working on making this process web based and fully electronic.

Montana has some of the best run elections in the country, and it is my commitment that they remain that way. It is important that we take the threat of voter fraud seriously, but in doing so we should not let an onslaught of false and questionable allegations paralyze us from working to improve the election process so that we can maintain elections that are fair, honest, open, and accurate for all Montanans.



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Linda McCulloch
Secretary of State

BALLOT ISSUE SIGNATURE GATHERING COMPLAINT

Date _____

Name _____

Phone _____

Address _____

Email _____

Date of Incident _____

Ballot Issue Number _____

Incident Location (be specific) _____

Please describe what you witnessed (use back page if necessary)

PLEASE NOTE:

1. The purpose of filing this complaint is to create a record of possible violations.
2. The Office of the Secretary of State may share this form with local law enforcement in the county where the alleged violation occurred.
3. The sponsor of the ballot issue in question may be sent a copy of this complaint form.
4. **Mont. Code Ann. 13-27-317. Contest of ballot issue petitions.** (1) Any qualified elector may, within 30 days after the date on which the issue was certified to the governor, file an action in the district court in the county of residence of the qualified elector contesting the certification of a ballot issue for illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.
(2) If a court finds that illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures affected the outcome of the petition process and certification, the secretary of state shall decertify the contested ballot issue.

Signature: _____

Date: _____

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